

# LAW ENFORCEMENT, PROSTITUTION AND PORNOGRAPHY

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AS THE AUSTRALIAN CAPITAL TERRITORY'S ATTORNEY-GENERAL, ONE OF THE most controversial issues in my portfolio has been pornography. Correspondence is received from all over Australia urging that the sale of X-rated videos in the ACT be banned. With the release of the *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991), prostitution may well join pornography as an issue which provokes much heated debate in the community.

Law enforcement in the areas of prostitution and pornography is particularly difficult because it involves balancing two competing concerns, first the right of adults to enjoy, in private, X-rated books, videos and magazines, and to conduct their sex lives as they wish. Against this must be balanced the right of the public not to be exposed to material or behaviour which they consider offensive, and the need to protect children from these areas. Other considerations influencing law enforcement are the possible involvement of organised crime in these areas and, for prostitution, the fact that it is currently illegal in the ACT.

In the area of pornography, the access of minors to X-rated material has been of great concern to the community. Despite the safeguards which have been introduced, test cases have proved how difficult it is to restrict this access, particularly where such material can be ordered by telephone. Although businesses appear to be concerned to stay within the law, there seems to be only so much they can do if minors are determined to gain access to this material.

Another problem in this area is the diversity of views within the community. Pornography seems to evoke strong reactions from most people: there is a vocal section of the community who are vehemently opposed to pornography, on religious or moral grounds. On the other hand there is a large and profitable market for X-rated products, both inside and outside the ACT, indicating that many people enjoy this material. It is interesting to note that Queensland, which has strict laws controlling censorship, also boasts the highest mail-order sales of X-rated videos of any state.

The legislative scheme surrounding censorship in the ACT makes any changes to existing laws difficult: it is controlled partly by the ACT government and partly by the Commonwealth government. The ACT cannot make any laws relating to classification of

materials for censorship purposes—this function has been retained by the Commonwealth. The ACT can, however, legislate on the distribution of films and publications. The Act which allowed the sale and distribution of X-rated material was a Commonwealth Act made only days before self-government of the ACT was introduced in May 1989.

The issue of pornography has implications for more than just our jurisdiction. Because of the booming interstate trade in mail-order X-rated videos, law enforcement measures in the ACT and the Northern Territory (which are the only legal sources of these videos) impact on their distribution Australia-wide. The mail order business embraces both illegal and legal operators. Australia Post—for a flat fee of \$30 per month—provides a redirection service for businesses. It is believed that the X-rated mail-order industry includes operators who are actually operating in other capital cities but using the re-direction service through mail boxes in Canberra. Perhaps it is time the Commonwealth had a look at this matter, if only to lessen the burden on taxpayers for double-handling of mail.

Just as the pornography issue has its own set of problems in law enforcement, prostitution also presents problems for the legislator and the law enforcer. It has been suggested that there are links into organised crime with prostitution. The Select Committee on HIV, Prostitution, and Illegal Drugs reported that they could find no evidence of organised crime involvement in prostitution in the ACT.

Another concern with regard to prostitution is the health risk to the community, especially with respect to AIDS. There was considerable concern in New South Wales when Charlene, an HIV-positive prostitute, admitted to continuing to work as a prostitute. More recently, however, the risk to the community has been seen as not so great. The Committee has found no significant link between preventing HIV infection of the community and prostitution.

The visibility of prostitution is also an issue of concern to the community. Street prostitution is generally uncommon in Canberra, brothels being the most common form of employment for sex workers. There have been strenuous objections to brothels which were sited in residential areas or in neighbourhood shopping centres. While the public in Canberra do not seem to object to prostitution in general, they would prefer that it took place in industrial rather than residential areas. There are signs, however, that prostitution has moved into the suburbs and a suspicion that more 'mobile' services are available, though not from the street.

The law enforcement responses in 1991 differ widely between prostitution and pornography, mainly because of the differences in the legislative schemes surrounding them. Prostitution is currently illegal, and law enforcement measures have been concerned with reconciling the laws, which are outdated, and current community standards. Pornography is legal in the ACT, so legislative measures are mainly aimed at refining the legislative scheme to best meet the needs of the public.

In 1991 in the ACT, prostitution is dealt with by the *Police Offences Act 1930*. This Act makes it a criminal offence to keep a brothel, to persistently solicit in a public place, or to live on the earnings of prostitution. It is also illegal to allow a public resort to be used as a meeting place for prostitutes. Although the legislation displays a clear intent to prevent prostitution and prostitution-related activities, the law is not enforced like this. The Director of Public Prosecutions (DPP) must give consent before prosecution can be initiated under the Act. The DPP does not consent to prosecution unless there are 'aggravating circumstances', for example, if members of the public have complained about a particular premises, if they are located in a residential area, or if illegal drugs are involved. The Australian Federal Police (AFP) have adopted a policy of 'containment and control' based on this policy of the DPP.

Prostitution law has not been amended in the ACT for a long time, so its enforcement has changed to deal with changes in community attitudes, including an increased tolerance of

prostitution. The recently released *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991) recommends the removal of criminal penalties for prostitution and the regulation of prostitution-related activities. The Report recommends that a Licensing Board be set up to regulate the location, management and running of brothels. While the current Alliance Government has not yet responded to the Report, this seems a sensible option for the ACT.

In the area of pornography, the ACT inherited a system of local controls over X-rated videos at the time of self-government in May 1989. In fact those controls were made by the Commonwealth Government two days before self-government. The ACT itself introduced legislation in July 1990 to restrict the sale and distribution of X-rated material to the light industrial areas (away from schools and residential areas), made it more difficult for minors to obtain such material by introducing proof-of-age requirements for all new orders, introduced a new offence of assisting a minor to obtain an X-rated video (for orders where there is some doubt as to age), and required that adult material be mailed 'envelope within an envelope'.

Despite much of the adverse publicity directed at the ACT about X-rated videos, there are steps that other jurisdictions could take to control their distribution which they have chosen not to take. The Commonwealth, for example, controls the importing of these videos: it could tighten its Customs controls to prevent unclassified material being imported into Australia. It could also enforce its laws which control the postal services and prevent the transmission of these videos by mail. The states could consider banning the possession of X-rated videos, thus curtailing the mail-order business. So far, none of these other jurisdictions have chosen to make these moves: they are quite content to let the ACT remain the 'scapegoat'. Although there is a Private Member's Bill before the Assembly at present, there is no indication that it will be more successful than it was twelve months ago in banning X-rated videos.

We must also keep pace with new developments in technology. It was announced recently in *The Canberra Times* that a new service will be available for home computer users providing information on brothels and escort agencies and making available pornographic books and magazines by computer. While this service will be based in Canberra, regulating it will be a Commonwealth responsibility, as the Commonwealth has control of telecommunications.

In reforming and enforcing laws in the areas of prostitution and pornography, the real problem lies in determining how far to intrude into the lives of individuals. The task of the law is to regulate people's public lives: that is, their dealings with each other in the public sphere. In dealing with people's sexual lives, the law is going beyond its usual function. To do so wisely is difficult.

## Reference

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.